

# Taylor, Morell & Gitomer

Karl Morell  
Louis E. Gitomer  
Suite 600

2115 Wisconsin Ave., N.W.

Washington, D.C. 20007

(202)625-3165/FAX (202)625-2795

January 24, 1992

Reese H. Taylor, Jr.  
Suite 230

Catalina Landing  
310 Golden Shore

Long Beach, California 90802  
(310)436-2519/FAX (310)436-5393

RECORDATION NO. 13862-A FILED 1425

JAN 24 1992 -2 45 PM

Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

RECORDATION NO. 13862-B FILED 1425

JAN 24 1992 -2 45 PM

Dear Secretary Strickland:

INTERSTATE COMMERCE COMMISSION

I have enclosed an original and two certified copies of each of the documents described below, to be recorded pursuant to 49 U.S.C. 11303.

The documents are an Assignment and Assumption Agreement and a Bill of Sale, secondary documents, each dated December 27, 1991. The primary document to which they are connected is recorded under Recordation No. 13862. We request that the agreement be recorded under Recordation No. 13862-A, and the Bill of Sale be recorded under Recordation No. 13862-B.

The names and addresses of the parties to the agreement and Bill of Sale are as follows:

**Purchaser:**

LPCA Corporation  
Four Embarcadero Center  
Suite 2200  
San Francisco, California 94111

**Seller:**

Westinghouse Credit Corporation  
1 Oxford Centre  
9th Floor  
Pittsburgh, Pennsylvania 15219

A description of the equipment covered by the agreement and Bill of Sale consists of: 20 50-cubic yard 100-ton DIFCO air side dump cars, with the following numbers: USSX 2556-2575, inclusive.

No casualties have occurred.

A fee of \$32.00 is enclosed. Please return the originals to:

Louis E. Gitomer  
Suite 1200  
1133 15th Street, N.W.  
Washington, D.C. 20005

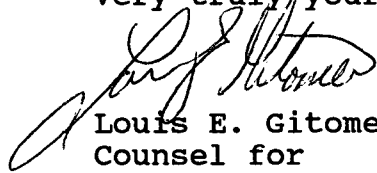


Honorable Sidney L. Strickland, Jr.  
January 24, 1992  
Page 2

A short summary of the documents to appear in the index follows:

An Assignment and Assumption and a Bill of Sale, secondary documents, each dated December 27, 1991, between LPCA Corporation, Four Embarcadero Center, Suite 2200, San Francisco, California 94111, and Westinghouse Credit Corporation, 1 Oxford Centre, 9th Floor, Pittsburgh, Pennsylvania 15219, consisting of 20 50-cubic yard 100-ton DIFCO air side dump cars, with the following numbers: USSX 2556-2575, inclusive.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Louis E. Gitomer", is written over the typed name.

Louis E. Gitomer  
Counsel for  
GATX Capital Corporation

LEG/jsh

Attachments

# Taylor, Morell & Gitomer

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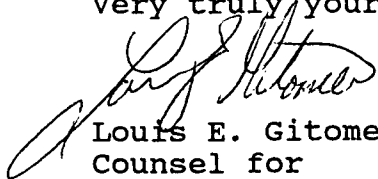
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Louis E. Gitomer  
Counsel for  
GATX Capital Corporation

LEG/jsh

Attachments

RECORDED 13863-A  
FILED 1443

JAN 14 1992 2 12 PM

15005 COMUS Steel #71058

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Agreement"), dated December 22, 1991, is by and between WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Seller"), and LPCA CORPORATION, a Delaware corporation ("Purchaser").

### RECITALS

Seller, Purchaser and GATX Capital Corporation are parties to a Purchase Agreement, dated as of November 27, 1991 (the "Purchase Agreement").

The Purchase Agreement provides, among other things, for the execution and delivery of an assignment and assumption in substantially the form hereof to effect the sale by Seller to Purchaser of all right, title and interest of Seller in and to, and the assumption by Purchaser of certain of the obligations of Seller under, the lease transaction documents set forth on the attached Schedule 4.1(e) (the "Lease Documents").

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Purchase Agreement.

2. Assignment. Seller does hereby GRANT, BARGAIN, ASSIGN, TRANSFER, SELL, DELIVER AND CONVEY UNTO PURCHASER, ITS SUCCESSORS AND ASSIGNS, TO HAVE AND TO HOLD FOREVER, all of Seller's right, title and interest in and to the Lease Documents; excluding, however, any claim, cause of action, liability or obligation of any nature or description or other right to payment (other than the rights of Purchaser pursuant to Sections 2.4, 6.1 and 6.3 of the Purchase Agreement) accruing, arising or relating to any period prior to the date hereof or payable by reason of any act, event or omission occurring or existing prior to the date hereof, whether known or unknown, contingent or otherwise, as of the date hereof.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 4 OF THE PURCHASE AGREEMENT, IN THIS AGREEMENT AND IN THE BILL OF SALE, THE SALE OF THE LEASE PROPERTY IS MADE "AS IS, WHERE IS," AND SELLER SHALL NOT BE DEEMED TO HAVE MADE ANY FURTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, NOW OR HEREAFTER AS TO THE (i) VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY, QUALITY OF MATERIAL OR WORKMANSHIP, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, MAINTENANCE OR

MARKETABILITY OF ANY LEASE PROPERTY, (ii) CREDITWORTHINESS OF THE LESSEE, (iii) ADEQUACY OF ANY INSURANCE COVERAGE APPLICABLE TO ANY LEASE PROPERTY, (iv) COLLECTIBILITY OF ANY AMOUNT UNDER ANY LEASE DOCUMENT, OR (v) TAX CHARACTERIZATION OF THE LEASE.

3. Assumption. Purchaser hereby confirms that it shall be deemed a party to the Equipment Lease Agreement (the "Lease") identified on the attached Schedule 4.1(e), on completion of the Closing, and Purchaser agrees to be bound by all of the terms thereof and undertakes to assume all of the obligations of Seller contained in the Lease Documents, occurring or arising on and after the date hereof. Upon the delivery of this Agreement, Seller shall not be responsible to any person for the discharge or performance of any duty or obligation pursuant to or in connection with the Lease Documents occurring or arising on and after the date hereof. Purchaser shall not be responsible to any person for the discharge or performance of any duty of obligation of Seller in connection with the Lease Documents occurring or arising prior to the date hereof.

4. Indemnity. The terms and provisions of the Purchase Agreement respecting indemnities of the parties are hereby incorporated herein by reference.

5. Further Assurances. Seller agrees to execute and deliver such further documents, and to do such further things, as Purchaser may reasonably request, and at Purchaser's expense, in order to more fully effect this Agreement and the transactions contemplated by the Purchase Agreement. Purchaser agrees to execute and deliver such further documents, and to do such further things, as Seller may reasonably request and at Seller's expense, in order to more fully effect this Agreement and the transactions contemplated hereby and by the Purchase Agreement.

6. Purchaser Representations. Purchaser represents, warrants and confirms:

(a) Upon the execution and delivery of this Agreement, Purchaser shall be deemed a party to the Lease, be bound by all of the terms thereof, and undertake all the obligations, arising on and after the date hereof of Seller under the Lease Documents;

(b) It has full right, power and authority to enter into this Agreement and to perform all duties and obligations of Seller under the Lease Documents;

(c) None of the Lease Documents, this Agreement or the performance of the obligations of Purchaser under such agreements, violate the provisions of any charter instrument, bylaw, indenture, mortgage, loan or credit agreement or other instrument to which it is a party or by which it may be bound; and

(d) No consent, approval or authorization of, or filing registration or qualification with, any governmental authority is necessary in connection with its performance of this Agreement or to the extent such approval, consent or other action is necessary, the same has been obtained and is in full force and effect.

7. Governing Law. This instrument shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

8. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall constitute but one and the same instrument.

U.S. Steel #71058

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

WESTINGHOUSE CREDIT CORPORATION

By: Glenn L. Stewart

Name: GLENN L. STEWART

Title: Vice President

PURCHASER:

LPCC CORPORATION

By: Gene F. Parker

Name: Gene F. Parker

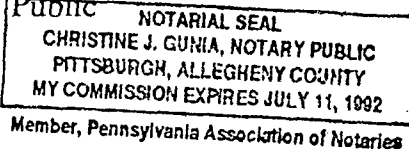
Title: Vice President

*Pennsylvania*  
STATE OF ~~CALIFORNIA~~ )  
*Allegheny* ) ss.  
COUNTY OF ~~SAN FRANCISCO~~ )

On December 27, 1991, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared Glenn L. Stewart, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as Vice President of Westinghouse Credit Corporation and acknowledged that he executed it.

Witness my hand and official seal.

*Christine J. Gunia*  
Notary Public

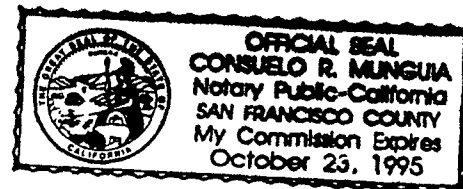


STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On January 20, 1992, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared Gene F. Parker, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as Vice President of LPCA Corporation and acknowledged that he executed it.

Witness my hand and official seal.

*Consuelo R. Munguia*  
Notary Public



SCHEDULE 4.1(e)

(United States Steel Corporation)

Schedule A  
Lease Transaction Documents

1. Equipment Lease Agreement dated as of November 30, 1982, between Westinghouse Credit Corporation and United States Steel Corporation..
2. Bill of Sale from DIFCO, Inc.
3. Purchase Order Assignment
4. Consent and Agreement of DIFCO, Inc.

In addition, including those documents described on index pages delivered to GATX by WCC on December 19, 1991.

0766/Q

Schedule 4.1 (f), cont.  
Lease Property

LESSEE United States Steel Corporation  
WCC Account No. 71058

EQUIPMENT  
INFORMATION

Description

Twenty (20) 50-cubic yard, 100-ton capacity air side dump cars manufactured by Difco, Inc. in the second and third quarters of 1982; numbers USSX 2556-2575 (the "Units").

Original Cost

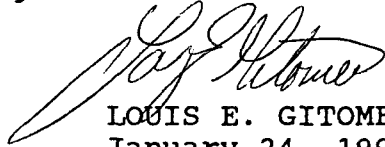
\$92,952.66 per Unit; \$1,859,053.20 total cost of all Units.

Reported Casualties

None.

CERTIFICATION

I, LOUIS E. GITOMER, have compared this copy with the original Assignment and Assumption Agreement, dated December 27, 1991, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read "Louis E. Gitomer", written in dark ink.

LOUIS E. GITOMER  
January 24, 1992